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20 Bottling Group, LLC (erroneously sued and served as Pepsi Beverages Company)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

19 ALTAREEK GRICE, on behalf of
20 himself and all others similarly
21 situated,

22 Plaintiff,

23 v.

24 PEPSI BEVERAGES COMPANY,
25 and DOES 1 through 10,

Defendants.

Case No. 17-cv-1842-ABJ-WVG

**DEFENDANT'S ANSWER TO
COMPLAINT**

Complaint Filed: June 29, 2017

1 Defendant Bottling Group, LLC (erroneously sued and served as Pepsi
 2 Beverages Company)¹ (“Defendant”), by and through its undersigned counsel,
 3 answers Plaintiff’s Complaint as follows:

4 1. Answering paragraph 1, Defendant admits that Plaintiff alleges certain
 5 policies and practices followed by Defendant violate provisions of the Fair Credit
 6 Reporting Act (“FCRA”). Defendant denies all remaining allegations in this
 7 paragraph.

8 2. Answering paragraph 2, whether Plaintiff is a “consumer” within the
 9 meaning of the FCRA is a legal question which Defendant is not required to admit or
 10 deny.

11 3. Answering paragraph 3, the FCRA definition of “person” speaks for
 12 itself, which Defendant is not required to admit or deny.

13 4. Answering paragraph 4, whether Defendant is a “person” as defined by
 14 the FCRA is a legal question which Defendant is not required to admit or deny.
 15 Defendant admits that Bottling Group, LLC does business in San Diego County.

16 5. Answering paragraph 5, Defendant lacks sufficient knowledge or
 17 information to form a belief as to the truth of the allegations, as they pertain to
 18 individuals and/or entities other than Defendant, and, on such basis, Defendant denies
 19 the allegations in this paragraph.

20 6. Answering paragraph 6, Defendant denies the allegations in this
 21 paragraph.

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27 ¹ Pepsi Beverages Company is not a legal entity. Plaintiff’s employer, at all material
 28 times, was Bottling Group, LLC.

First Cause of Action

Violation of 15 U.S.C. Section 1681b(b)(2)

7. Answering paragraph 7, Defendant incorporates herein by reference its responses to paragraphs 1-6 inclusive, as though fully set forth herein.

8. Answering paragraph 8, the FCRA definition of “consumer report” speaks for itself, which Defendant is not required to admit or deny.

9. Answering paragraph 9, Defendant admits that it procures consumer reports on certain applicants for employment. Defendant denies all remaining allegations in this paragraph.

10 10. Answering paragraph 10, the provisions of Section 1681b(b) of the
11 FCRA speak for themselves, which Defendant is not required to admit or deny.
12 Defendant denies all remaining allegations in this paragraph.

13 11. Answering paragraph 11, Defendant admits Plaintiff applied for a job in
14 or about August 2016 and that Defendant procured a consumer report on Plaintiff
15 from Carco Group, Inc. Defendant denies all remaining allegations in this paragraph.

16 12. Answering paragraph 12, Defendant denies the allegations in this
17 paragraph.

18 13. Answering paragraph 13, Defendant denies the allegations in this
19 paragraph.

14. Answering paragraph 14, Defendant denies the allegations in this paragraph.

CLASS ALLEGATIONS

23 15. Answering paragraph 15, Defendant admits that Plaintiff intends to bring
24 this action as a class action. Defendant denies that Plaintiff has viable claims and that
25 any claims he alleges may be prosecuted as a class action. Except as herein expressly
26 admitted, Defendant denies, generally and specifically, each and every remaining
27 allegation in this paragraph.

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1 16. **Numerosity:** Answering paragraph 16, Defendant admits that Plaintiff
 2 intends to bring this action as a class action. Defendant denies that Plaintiff has viable
 3 claims and that any claims he alleges may be prosecuted as a class action. Except as
 4 herein expressly admitted, Defendant denies, generally and specifically, each and
 5 every remaining allegation in this paragraph.

6 17. **Existence and Predominance of Common Questions of Law and**
 7 **Fact:** Answering paragraph 17, Defendant admits that Plaintiff intends to bring this
 8 action as a class action. Defendant denies that Plaintiff has viable claims and that any
 9 claims he alleges may be prosecuted as a class action. Except as herein expressly
 10 admitted, Defendant denies, generally and specifically, each and every remaining
 11 allegation in this paragraph.

12 18. **Typicality:** Answering paragraph 18, Defendant admits that Plaintiff
 13 intends to bring this action as a class action. Defendant denies that Plaintiff has viable
 14 claims and that any claims he alleges may be prosecuted as a class action. Except as
 15 herein expressly admitted, Defendant denies, generally and specifically, each and
 16 every remaining allegation in this paragraph.

17 19. **Adequacy:** Answering paragraph 19, Defendant admits that Plaintiff
 18 intends to bring this action as a class action. Defendant denies that Plaintiff has viable
 19 claims and that any claims he alleges may be prosecuted as a class action. Except as
 20 herein expressly admitted, Defendant denies, generally and specifically, each and
 21 every remaining allegation in this paragraph.

22 20. **Superiority:** Answering paragraph 20, Defendant admits that Plaintiff
 23 intends to bring this action as a class action. Defendant denies that Plaintiff has viable
 24 claims and that any claims he alleges may be prosecuted as a class action. Except as
 25 herein expressly admitted, Defendant denies, generally and specifically, each and
 26 every remaining allegation in this paragraph.

27 Defendant denies that Plaintiff is entitled to any relief, including but not limited
 28 to the relief sought and/or enumerated by Plaintiff in the Complaint.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's Complaint, Defendant alleges the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

Neither the Complaint, nor any purported cause of action alleged therein, states facts sufficient to constitute a cause of action upon which relief can be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statutes of Limitations)

The Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the applicable statutes of limitations, including, but not limited to, 15 U.S.C. § 1681p.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

The Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the doctrine of collateral estoppel, judicial estoppel, or *res judicata*.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

The Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the doctrine of waiver.

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SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

To the extent Plaintiff's named representative and/or Plaintiff has or has had unclean hands with respect to the matters alleged in the Complaint, they are barred, in whole or in part, from recovering any relief on the Complaint or any purported cause of action alleged therein.

SEVENTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiff is not entitled to any relief because the Complaint and each purported cause of action alleged therein is barred in whole or in part due to Plaintiff's consent to any and/or all of the conduct about which Plaintiffs now complain.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff is barred, in whole or in part, from recovering any damages, or any recovery of damages must be reduced, excludes and/or discharged by virtue of Plaintiff's failure to exercise reasonable diligence to mitigate the alleged damages.

NINTH AFFIRMATIVE DEFENSE

(Injunctive Relief Preempted)

Plaintiff's request for equitable relief is barred to the extent Plaintiff seeks injunctive relief, as private litigants are prohibited from seeking injunctive relief under the FCCA, and the FCRA preempts state law to the extent those laws are inconsistent with the FCRA.

TENTH AFFIRMATIVE DEFENSE

(Releases)

To the extent Plaintiff had executed or, in the future will have executed, releases of claims, his recovery is barred.

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1 WHEREFORE, Defendant prays for judgment as follows:

2 1. That Plaintiff take nothing by his Complaint;

3 2. That Defendant be awarded all of its costs and attorneys' fees incurred

4 herein; and

5 3. That the Court award such other and further relief as it deems just and

6 proper.

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8 DATED: September 18, 2017

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

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10 By: /s/Jonathan Liu

11 TIM JOHNSON
12 JONATHAN LIU
13 STEPHEN R. WOODS
14 JAMES R. SILVERS

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16 Attorneys for Defendant
17 BOTTLING GROUP, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Notice of Electronic Filing.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 18, 2017.

By: /s/ Jonathan Liu
Jonathan Liu

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